

CANDY HANSEN)
 Claimant)
 VS.)
 Respondent)
WHOLE FOODS MARKET)
 Respondent)
 AND)
 Respondent)
ACE AMERICAN INSURANCE COMPANY)
 Insurance Carrier)

Docket No. 1,026,667

Claimant contends Judge Hursh erred. Claimant argues her depression and anxiety disorder are directly traceable to her work-related injuries as the medical evidence is uncontradicted that claimant's psychological problems resulted from her inability to work, the consequent loss of her job, and her persistent pain. Accordingly, claimant requests the

Board to reverse the June 21, 2006, Order and find that claimant's psychological problems are compensable as they are related to her work-related injuries.

Conversely, respondent and its insurance carrier contend the Board should either dismiss this appeal or affirm the June 21, 2006, Order. They first argue the Board does not have jurisdiction to review the preliminary hearing Order as the appeal deals with the denial of additional medical benefits. In the alternative, they argue the Board should affirm the Order as the alleged psychological injury is not directly traceable to claimant's physical injury.

The issues before the Board on this appeal are:

1. Does the Board have jurisdiction to review this preliminary hearing Order?
2. If so, did claimant prove her present need for psychiatric treatment is directly related to the injuries she sustained working for respondent?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds the preliminary hearing Order should be reversed.

The parties agree claimant injured her right shoulder on November 20, 2004, when she was unloading a box of containers from a cart. Moreover, the parties stipulate that claimant's accident arose out of and in the course of her employment with the respondent.

In January 2005, claimant underwent right shoulder surgery, which included repairing the torn biceps tendon and a torn rotator cuff. Following surgery, claimant was prescribed physical therapy. According to claimant, during that therapy she developed a tremor in her right arm.

Before her injury, claimant worked in respondent's produce department. Most of claimant's job entailed cutting up produce and preparing food items to put on the floor for customers. After recovering from surgery, claimant initially returned to work on a part-time basis "demoing [demonstrating] foods to customers."¹ In late May 2005, claimant was released to work four hours per day. At that time she was given the job of stocking the produce shelves, which she principally performed until December 2005 when she received her permanent work restrictions and was terminated.

¹ P.H. Trans. (Apr. 3, 2006) at 12.

While stocking the produce shelves and handling boxes of produce, claimant also developed low back, left hip and leg symptoms.

The tremor in claimant's right arm is somewhat unusual and claimant's physicians are having a difficult time determining its cause. Dr. James H. Whitaker, whom claimant saw in October 2005 for a second opinion, suggested neurological studies. Dr. Roger W. Hood, whom claimant saw in February 2006, thought the tremor was pure fabrication and suggested surveillance. Dr. James S. Appelbaum, whom claimant saw in March 2006, concluded the tremor was not due to an organic neurologic cause. But Dr. Appelbaum wanted an EMG to exclude a peripheral nerve component and the doctor also suggested a referral to a movement-disorder specialist.

The only doctors to specifically address claimant's psychological state are Dr. Daniel D. Zimmerman and Dr. John D. Pro. Dr. Zimmerman saw claimant at her attorney's request in early March 2006 and found that she appeared severely depressed. Dr. Zimmerman noted claimant was tearful during the examination and that her arm tremor appeared to worsen when she discussed emotionally charged topics. Accordingly, Dr. Zimmerman recommended, among other things, a psychiatric evaluation.

Dr. Pro, who saw claimant at her attorney's request for a psychiatric evaluation in June 2006, concluded claimant had severe, recurrent major depressive disorder and severe, recurrent generalized anxiety disorder. The doctor concluded claimant's depression and anxiety were directly caused by her inability to work, the loss of her job, and her persistent pain. Moreover, the doctor believed claimant needed immediate psychiatric treatment, psychotherapy, and further evaluation of her tremor as recommended by Dr. Appelbaum.

Dr. Pro's opinions are persuasive. The evidence establishes that claimant suffers from depression and anxiety that are directly related to her injuries that she sustained working for respondent. There is an unbroken chain or connection directly between claimant's accident and her psychological condition. Accordingly, claimant is entitled to receive treatment for her depression and anxiety under the Workers Compensation Act. To that extent, the Board finds the June 21, 2006, Order should be reversed.

The Board notes respondent and its insurance carrier challenge the Board's jurisdiction to review this preliminary hearing Order. The issues of whether an injury or particular medical treatment is related to a compensable work-related accident are preliminary hearing issues that the Board is empowered to review as they address the compensability of an alleged injury. The question of whether a psychological condition is directly traceable to the work-related accident is a question that goes to the compensability of the condition. Stated another way, it gives rise to a disputed issue of whether the psychological condition arose out of and in the course of employment.

WHEREFORE, the Board reverses the June 21, 2006, Order and finds that claimant's depression and anxiety are directly related to her work-related injuries and, therefore, claimant is entitled to receive treatment for those conditions under the Workers Compensation Act. This claim is remanded to the Administrative Law Judge for further orders consistent with that finding.

IT IS SO ORDERED.

Dated this ____ day of August, 2006.

BOARD MEMBER

c: Timothy E. Power, Attorney for Claimant
Richard W. Morefield, Jr., Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge